

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6280

BILL NUMBER: SB 28

NOTE PREPARED: Jan 18, 2008

BILL AMENDED: Jan 17, 2008

SUBJECT: Fire Safe Cigarettes.

FIRST AUTHOR: Sen. Drozda

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill establishes reduced ignition propensity standards for cigarettes. It authorizes the State Fire Marshal (SFM), the Department of State Revenue (DOR), and the Alcohol and Tobacco Commission (ATC) to monitor and enforce the standards. It provides for certification fees and penalties. It establishes (1) the Reduced Ignition Propensity Standards for Cigarettes Fund; and (2) the Fire Prevention and Public Safety Fund.

Effective Date: July 1, 2008.

Summary of NET State Impact: Beginning July 1, 2009, cigarettes must be certified as meeting reduced ignition propensity standards. Costs to implement the standards for the first year are estimated at \$800,500 with costs for the second year at \$530,000. The bill provides for certification fees and penalties. Revenue generated from fees is estimated at \$250,000 in 2010. All cigarette brands must be recertified every three years; therefore, there will be registration fee revenue generated every three years.

The SFM may adjust the fee each year to ensure that the fee defrays the actual costs of processing, testing, enforcement, and oversight. Fee revenue generated after FY 2011 will ultimately depend upon the amount of the fee in the years following FY 2011. Based on a revenue estimate of \$250,000 for fees paid every three years, annualized revenue would equal \$83,000. The annualized registration fee would equal \$83. Given these figures, the initial \$250 fee would need to be increased to over \$2,400 in order to cover the \$800,500 costs for the first year. In order to cover \$530,000 costs in the second year, the fee would need to be set at over \$1,500.

Because the fee would not generate revenue until FY 2009 and the SFM must implement the program during

FY 2009, startup costs would need to be covered by other sources. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

For FY 2007, DHS reverted \$2.5 M to the state General Fund.

Explanation of State Expenditures: The bill provides that cigarettes may not be sold in Indiana unless, among other provisions, a written certification has been filed by the manufacturer with the SFM. Beginning July 1, 2011, every three years the SFM must issue a report that includes findings and, if appropriate, recommendations for legislation. The SFM must transmit a copy of the report in an electronic format to the executive director of the Legislative Services Agency (LSA) for distribution to the members of the General Assembly. Each manufacturer must submit to the SFM a written certification attesting certain facts. Certifications must be made available to the Attorney General (AG) and the DOR and the ATC for the purposes of ensuring compliance. Each cigarette must be recertified every three years.

Packages of cigarettes that are certified by a manufacturer must be marked to indicate compliance. The manufacturer must notify the SFM of the marking that is selected. Proposed markings are considered approved if the SFM fails to act within 10 business days after receiving a request for approval.

Costs to the SFM's Office are outlined below.

Fire Safe Cigarette Program			
Startup Cost		Continuing Cost Per Year	
Program Administrator-PAT1	\$50,000	Fuel	\$32,000
Asst Program Admin.-PAT3	42,000	Replacement of cars	30,000
Secretary-COMOT 4	28,000	Cell Phones	10,000
Admin Assist - COMOT 3	38,000	Replace Computers	6,000
Contracted Expert	50,000	Vehicle Maintenance	6,000
5 Field Staff Enforce-PAT3	210,000	Continuing Training	13,000
6 cars @ 25,000+equip.	190,000	Office Supplies	5,000
Computers	18,000	Contracted Expert	25,000
Law Enforcement Academy	35,000	Maintaining Data Base	10,000
7 Cell Phones	10,000	Laboratory Services	25,000
Weapons/equip 5 Enforce	10,500	Office Staff	158,000
Training for staff	47,000	Field Staff	210,000
Office Equipment	12,000		
Date Base Development	10,000		
Laboratory Services	50,000		
Total	\$800,500	Total	\$530,000

Reduced Ignition Propensity Standards for Cigarettes Fund. The bill establishes this fund, which may be used to support processing, testing, enforcement, and oversight activities. The SFM administers the fund. Expenses of administering the fund must be paid from money in the fund. Money in the fund at the end of

the state fiscal year does not revert to the state General Fund.

Enforcement. A law enforcement officer or representative of the SFM may take possession of cigarettes that have not been marked in the manner required. The seized cigarettes must be turned over to the DOR and destroyed. The holder of the trademark rights in the cigarette brand is allowed to inspect the cigarette. The DOR, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, and the ATC may inspect cigarettes to determine if the cigarettes are marked as required. The DOR and the ATC must notify the SFM of cigarettes that are not marked as required.

Fire Prevention and Public Safety Fund. The bill establishes the nonreverting fund. The SFM must administer the fund. Money in the fund may be used to support fire safety and prevention programs. Expenses of administering the fund must be paid from money in the fund.

Rules. The SFM should be able to adopt rules given its existing level of resources.

Explanation of State Revenues: Certification Fees. For each cigarette listed in a certification, a manufacturer must pay a fee to the SFM of \$250. The SFM may annually adjust the fee to ensure that the fee defrays the actual costs of the processing, testing, enforcement, and oversight activities required. According to the National Fire Protection Association (NFPA), and based on other states that have enacted this legislation, there are approximately 1,000 cigarette brands that may be certified in Indiana. Therefore, it is estimated that the registration fee will increase state revenues by approximately \$250,000 in FY 2010. The impact will not begin until FY 2010 due to the provision requiring application of the certification requirements beginning July 1, 2009. All cigarette brands must be recertified every three years; therefore, there will be registration fee revenue generated every three years. Since the fee may be annually adjusted by the SGM, fee revenue generated after FY 2010 will ultimately depend upon the amount of the fee in the years following FY 2010.

Reduced Ignition Propensity Standards for Cigarettes Fund. The bill establishes the nonreverting fund to support processing, testing, enforcement, and oversight activities. The SFM must administer the fund. The Treasurer of State must invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. The fund consists of certification fees as well as gifts and grants.

Fire Prevention and Public Safety Fund. The nonreverting fund, to be administered by the SFM, is established. Money in the fund may be used to support fire safety and prevention programs. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. The fund consists of penalties recovered (from violations listed below); and grants, gifts, and donations.

Penalties. A manufacturer, a wholesale dealer, an agent, or another person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the provisions is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold. However, the penalty against a person or an entity may not exceed \$100,000 during any 30-day period.

A retail dealer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold. However, the penalty against a retail dealer may not exceed \$25,000 during any 30-day period.

Any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000. However, the penalty may not exceed \$250,000 for each false certification.

A person that violates any other provision is subject to a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense not to exceed \$5,000 for each violation. The amount of revenue that will be generated by the penalty provisions is indeterminable.

Recovering Damages Suffered by the State. The SFM or AG may file an action in a court for a violation, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation, including enforcement costs relating to the specific violation and attorney's fees. Each violation constitutes a separate civil violation for which the SFM or AG may obtain relief. The amount of revenue that will be recovered is indeterminable.

Other Civil Penalties. Each manufacturer must maintain copies of the reports of all tests conducted on all cigarettes offered for sale for three years and make copies of these reports available to the SFM and the AG upon written request. Any manufacturer that fails to make copies of these reports available within 60 days after receiving a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60 days that the manufacturer does not make the copies available. Civil penalties are deposited in the state General Fund.

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: *Reduction in Expenditures for Fewer Fires.* Cigarette-ignited fires are the leading cause of home fire deaths in the U.S., killing 700 to 900 people annually, according to NFPA. A reduction in home fires could reduce local expenditures associated with emergency response.

Also, see *Explanation of State Expenditures* above relative to law enforcement officers seizing cigarettes that have not been marked in the manner required.

A local governmental unit may not adopt an ordinance concerning any subject regulated by the provisions of the bill.

Explanation of Local Revenues: *Court Fee Revenue:* The SFM or AG may file an action in a court for a violation of the provisions of the bill, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation. If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: DOR, SFM, AG, LSA, Treasurer of State, ATC.

Local Agencies Affected: Courts, law enforcement agencies, and local governmental units that adopt ordinances.

Information Sources: DHS; http://www3.legis.state.ia.us/fiscalnotes/data/82_1646HVv0_FN.pdf;
<http://www.nfpa.org/newsReleaseDetails.asp?categoryid=488&itemId=32997&cookie%5Ftest=1>;
<http://www.legis.state.ak.us/PDF/25/F/SB0084-6-2-051207-REV-Y.PDF>

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